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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,553	02/12/2004	Richard A. Tatina	P03,0610	5760

26574 7590 04/08/2005

SCHIFF HARDIN, LLP
PATENT DEPARTMENT
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CHICAGO, IL 60606-6473

EXAMINER

GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 10/777,553	Applicant(s) TATINA, RICHARD A.	
	Examiner Stephen Gordon	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 11, 14, 15, 17, 18 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-10, 12, 13, 16 and 19 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-12-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 20-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention group. Election was made **without** traverse in the reply filed on 2-14-05. Additionally, it is noted, applicant elected the roller species of figure 4B but failed to elect an anchoring configuration as required in the last office action. During a telephone conversation with applicant's attorney Brett Valiquet on 3/23/05, election of the embodiment of figure 5A and 5B was made to complete the election of species requirement included in the last action. After review of the claims, it has been determined that claims 3, 4, 11, 14-15, and 17-18 are additionally withdrawn as being directed to a non-elected embodiment.

2. It is requested that applicant cancel at least non-elected claims 20-24 in response to this action to facilitate the issue process if the application is ultimately allowed.

3. The disclosure is objected to because of the following informalities: "tube 29" on page 6 – line 8 should be –tube 29A--.

Appropriate correction is required.

4. Claims 13, 16, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 13, "the banding anchor body" in line 4 lacks antecedent basis and could be written as –a banding anchor body—for clarity.

Re claim 14, applicant should note, while a complete action on the merits for non-elected claim 14 has not been included herein, in an effort to expedite prosecution, it is noted that "said apertures" in line 4 appears to lack clear antecedent basis and could be written as --said side leg apertures--. Additionally, line 3 is somewhat awkward/confusing, and "and" of the line could be replaced with --, said shackle—to clarify the claim in this regard as best understood.

Re claim 15, applicant should note, while a complete action on the merits for non-elected claim 15 has not been included herein, in an effort to expedite prosecution, it is noted that "the load platform" in the last line should be --the loading platform—for consistency/clarity.

Re claim 16, the recited frame attachment of line 1 apparently constitutes a double inclusion of the connecting member of the base claim.

Re claim 18, applicant should note, while a complete action on the merits for non-elected claim 18 has not been included herein, in an effort to expedite prosecution, it is noted that "said aperture" in line appears to lack clear antecedent basis and could be written as --said stake pocket aperture--.

Additionally, line 4 is somewhat confusing as the recited shackle apparently constitutes a double inclusion of the connecting member of the base claim.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 7-10, 12-13, and 19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordstrom in view of Graf et al.

Nordstrom teaches a load brace for securement of a load to a loading platform including a frame attachment/connecting member 40+, a banding anchor body 14+ with a roller 16 retained within an inside aperture thereof, and a body loop portion (i.e. the hollow loop portion of frame 11 bounded by the rightmost element 14 in figure 2, the arm portion 12, and the bottom of frame 11 as viewed in figure 2) at one end as broadly claimed.

Nordstrom fails to specifically teach that the roller is cushioned.

Graf et al teaches a cargo load brace of similar design and use to the Nordstrom device. Graf et al teaches a cushioned roller 19 to provide better protection for an engaged load – see figure 6 and section 2, lines 35-39 etc.

In order to better protect a handled load, it would have been obvious to one of ordinary skill in the art to replace the roller of Nordstrom with a cushioned roller in view of the teachings of Graf et al.

Re claims 1 and 13, the roller of Nordstrom as modified by Graf et al is capable of being used with a band looped end positioned therearound and is deemed “designed to be positioned within the loop of the band” as broadly claimed.

Re claim 2, the top surface of the portion of the arm 12 included in the loop portion defines a top part as broadly claimed. Additionally, the side edges of this arm portion define sides as broadly claimed. Further, the arm portion and the lower bounding portion of frame 11 of the loop portion angle towards each other

and end at a rounded portion adjacent stud 40 – see figure 2. Such portions are deemed to define angled portions and a rounded portion as broadly claimed.

Re claim 7, the roller retaining pin of Nordstrom defines a bolt as broadly claimed.

Re claims 8-10, note elastomeric/urethane material of Graf et al in roller 19 – see figure 6 and section 2, lines 35-39 of Graf et al.

With additional regard to claim 10, Graf et al fails to teach a specific material for the outer tube of the roller 19. Steel per se is a notoriously well known material in the art for fabricating cargo securing assemblies due to its high strength characteristics. In order to create a roller which is of sufficient strength to handle most applications, it would have been obvious to one of ordinary skill in the art to utilize steel for the outer tube of the modifying roller 19 of Graf et al in view of known art practices.

Re claim 12, Nordstrom as modified by Graf et al could be used on a railroad car loading platform. In as much as the platform/railroad car are not positively recited elements of the instant claimed combination, the functional language relating thereto is given little patentable weight.

Re claim 19, Nordstrom specifically teaches use on a vehicle cargo loading platform. Nordstrom fails to specifically teach that such platform includes a railroad car platform. While a railcar platform per se is not specifically taught by Nordstrom, use of the Nordstrom device as modified on a railroad car platform would clearly have been obvious to one of ordinary skill in the art, and specific

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recitation of this particular type of vehicle would not define a patentably distinct departure from the teachings of Nordstrom or Graf et al.

7. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Jones et al teaches an articulating tie down.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Gordon

STEPHEN T. GORDON
PRIMARY EXAMINER